

Some guarantors have different requirements regarding the treatment of disbursements when a lender is notified of a borrower's filing for bankruptcy. These requirements are noted in appendix C.

Suspending Collection

If the lender is notified that a borrower has filed a petition for relief in bankruptcy, the lender must immediately suspend any collection efforts against the borrower that are outside the bankruptcy proceeding. If the borrower filed a Chapter 12 or 13 bankruptcy, the lender must also suspend any collection efforts against any comaker or endorser. Suspension of collection efforts against any comaker or endorser is optional if the borrower filed a Chapter 7 or 11 bankruptcy.

If the lender is notified that a comaker or endorser has filed a petition for relief in bankruptcy, the lender must immediately suspend any collection efforts against the comaker or endorser that are outside the bankruptcy proceeding. If the comaker or endorser filed a Chapter 12 or 13 bankruptcy, the lender must also suspend any collection efforts against the borrower and any other parties to the note. Suspension of collection activities against the borrower and any other parties to the note is optional if the comaker or endorser filed a Chapter 7 or 11 bankruptcy.

Filing a Proof of Claim

A lender must file a proof of claim with the bankruptcy court no later than 30 days after it receives the Notice—unless the Notice specifically states that a proof of claim is not required. If required, the proof of claim must be filed, even if a default claim has already been filed on the loan and the lender has not yet received payment from the guarantor. If a proof of claim is required, the lender must immediately forward a copy of the bankruptcy notification, proof of claim, and an original assignment of the proof of claim to the guarantor.
[§682.402(f)(4)]

▲ Some guarantors may file a proof of claim on the lender's behalf. Lenders may contact individual guarantors for more information. See section 1.5 for contact information.

If a proof of claim is not required by the court, the lender should ensure that it is on the bankruptcy court's mailing list. This may be accomplished through either a telephone call or letter to the bankruptcy court. Doing so will ensure that the current holder receives all notices regarding the borrower's bankruptcy filing.

All notices received regarding the borrower's bankruptcy filing should be forwarded to the guarantor, within 30 days of receipt, if a claim is pending or has been paid.

Chapter 12 or 13 Bankruptcy Plan Procedures

~~If a lender is advised that a borrower has filed for bankruptcy under Chapter 12 or 13, the lender is strongly encouraged to immediately forward a copy of the bankruptcy plan to the guarantor. If the lender does not possess a copy of the bankruptcy plan, the lender must immediately send a letter to the bankruptcy court requesting that the bankruptcy plan be forwarded to the guarantor. At the time a claim is filed, the lender must include in the claim file either a copy of the bankruptcy plan or a copy of the letter previously sent to the bankruptcy court requesting that the bankruptcy plan be forwarded to the guarantor.~~

▲ ~~Some guarantors may obtain a copy of the bankruptcy plan on the lender's behalf. Lenders may contact individual guarantors for more information. See section 1.5 for contact information.~~

Loans Eligible for Bankruptcy Claim Payment

A lender must file a bankruptcy claim if any one of the following conditions exist:

- A borrower files a Chapter 12 or 13 bankruptcy.
- A Chapter 7 or 11 bankruptcy is converted to a Chapter 12 or 13 bankruptcy.
- A borrower files a petition for undue hardship (or adversary complaint) under a Chapter 7 or 11 bankruptcy.
[§682.402(f)(5)(i)(A) and (C); 971 PL 105-244]

In all cases, the guarantor will review the loan's servicing history to ensure that servicing requirements have been fulfilled before the date the lender was notified of the borrower's petition for bankruptcy.

If a loan is made to two borrowers as comakers, the loan is dischargeable as a bankruptcy claim only if both borrowers have filed bankruptcy actions under which federal educational loans are dischargeable or if one borrower has done so and the other borrower has his or her obligation to repay the loan discharged on another basis (such as death or total and permanent disability). If only one comaker has his or her obligation to repay the loan discharged, the other comaker becomes obligated for the repayment of the remaining loan balance. However, the lender must follow bankruptcy, statutory, and case law as it pertains to comaker discharge.

When preparing a claim, the lender must file a proof of claim with the bankruptcy court for all “asset” cases (as instructed on the Notice) and include a copy of the proof of claim and an original assignment of the proof of claim in the claim file. ~~In the case of a Chapter 12 or 13 bankruptcy, the lender must also include a copy of the bankruptcy plan in the claim file. In the absence of the Chapter 12 or 13 bankruptcy plan, the lender must include a copy of the letter sent to the bankruptcy court requesting that a copy of the plan be forwarded to the guarantor.~~

Loans Not Eligible for Bankruptcy Claim Payment

If a loan is not eligible for claim payment, the lender must hold the loan and cease collection activities until the bankruptcy action concludes. When the action concludes and the lender is notified that the loan was deemed nondischargeable, that the bankruptcy case was dismissed, or that a discharge was reversed, the lender must treat the loan as though it were in forbearance. Any accrued interest should be capitalized from the date of the bankruptcy petition to the date the lender received notification that the bankruptcy action was concluded. The lender also may include in the administrative forbearance any period before the date of the bankruptcy petition for which the borrower was delinquent.

[§682.402(f)(5)(ii)]

The lender must return the account to repayment and schedule the next payment due date to occur within 45 days after receiving the notification that the bankruptcy action has concluded, if the account should be in repayment at that time. If the loan was in a deferred, in-school, or grace status at the time the bankruptcy notification was received, the lender should ascertain the correct status for the loan at the conclusion of the bankruptcy action and return the loan to that status.

Timely Filing Deadlines for Bankruptcy Claims

In the absence of information to the contrary (such as a date stamp on the Notice), a guarantor will assume that any notification provided by a bankruptcy court was received by the lender on the 5th day following the court issuance date marked on the Notice. A lender is strongly encouraged to date-stamp all bankruptcy notifications immediately upon receipt, to provide clear evidence of the receipt date. Other acceptable proof of receipt includes a letter from the lender certifying a specific receipt date or documentation in the borrower’s file or the servicing history of the loan.

[§682.402(f)]

A bankruptcy claim and proof of claim, if applicable, must be filed with all required documents within 30 days of the lender’s receipt of the bankruptcy notification. For more information on documentation to be filed with a bankruptcy claim, see subsection 8.3.B.

[§682.402(g)(2)(iv)(A)]

If a borrower files a petition for undue hardship (or adversary complaint), the lender must file a claim within 15 days of receiving proper notification. If the lender receives an extension of time from the bankruptcy court for filing a response to the undue hardship petition (adversary complaint), the claim must be filed no less than 25 days before the expiration of that extended period.

[§682.402(g)(2)(iv)(B)]

Failure to submit a dischargeable bankruptcy claim by the end of the claim filing deadline will result in permanent cancellation of the guarantee on the loan—unless the lender can demonstrate that the bankruptcy action has been concluded and that the loan was not discharged or that the bankruptcy action in which the loan was originally discharged has been reversed. If this is the case, the lender need not cure the violation but must return the loan to the appropriate status and resume servicing activities. If the loan was 270 days or more delinquent at the time the borrower filed bankruptcy, the lender may treat the loan as a default. The lender may file a default claim within 90 days of being notified of the bankruptcy action’s conclusion or reversal or by the 360th day of delinquency, whichever is earlier. The claim, if purchased, will be subject to an interest penalty, and the lender will be required to repay all interest benefits and special allowance payments for amounts received or otherwise payable from the date on which the loan should have been filed as a bankruptcy claim through the date on which the lender received notice that the loan was not dischargeable or that the discharge had been reversed.

If a lender incurred due diligence violations or timely filing violations that resulted in cancellation of the guarantee, and those violations remained uncured as of the date it received notification of the bankruptcy filing, the lender may not file a bankruptcy claim. These violations cannot be cured—unless the debt is not discharged at the conclusion of the bankruptcy action, in which case the lender may attempt to cure the violations after the loan is returned to a repayment status.

6. *Repayment Disclosure*

Documentation of the borrower's repayment disclosure must include the repayment start date, first payment due date, the amount and number of the borrower's scheduled payments, the loan balance including capitalized interest, and the date on which the disclosure was sent. If such information is provided as part of the servicing history of the loan, a copy of the actual repayment disclosure form need not be included in the claim file.

7. *Deferment/Forbearance Documentation*

The servicing history notation of each borrower request for deferment or forbearance, along with any deferment documentation, must indicate the beginning date, ending date, and type of deferment or forbearance.

Some guarantors may require actual paper copies of deferment documentation. These requirements are noted in appendix C.

8. *Collection History*

The lender must submit a complete and legible record of the collection history of the loan. Such documentation must clearly reflect due diligence, servicing, and collection activities performed, sufficient to support guarantor review. The lender should ensure that the guarantor has on file an up-to-date legend of the lender's collection and servicing codes.

9. *Complete Payment History*

A history of payments made by or on behalf of the borrower must be provided to document the following:

- All borrower payments, prepayments, and school refunds received—including the dates, amounts, and application (the distribution to principal, interest, and other charges) of each payment or return.
- All interest capitalization that occurred.

If the loan was assigned from a previous holder, the new holder must be able to provide a complete payment history or other summary of payments made by or on behalf of the borrower detailing the prior holder's receipt of payments, prepayments, and school refunds.

The lender should ensure that the guarantor has on file an up-to-date legend of the lender's payment codes.

If all or a portion of the payment history is missing, the lender must follow guidance in subsections 8.8.C. and 8.8.I.

Death or Disability Claims

For a death claim, the lender must submit—in addition to the preceding items 1 through 9—an original or certified copy of the death certificate (see subsection 8.2.B.). In the event of an exceptional circumstance and on a case-by-case basis, the lender must submit other reliable documentation approved by the guarantor's CEO.

For a total and permanent disability claim, the lender must submit—in addition to the preceding items 1 through 9—a completed Physician's Certification of Borrower's Total and Permanent Disability, a common Temporary or Permanent Total Disability Certification Request Form, or other forms approved by the Department (such as the common deferment form).

Bankruptcy Claims

For a bankruptcy claim, the lender must submit—in addition to the preceding items 1 through 9—notification of the bankruptcy filing, such as the Notice of the First Meeting of Creditors or other proof of filing received from the borrower's attorney or the bankruptcy court; a copy of the Proof of Claim filed by the lender, if required; an original assignment of the Proof of Claim; ~~in the case of a Chapter 12 or 13 bankruptcy, either a copy of the Chapter 12 or 13 bankruptcy plan or a copy of the letter sent to the bankruptcy court requesting that a copy of the plan be forwarded to the guarantor;~~ and all other pertinent documents sent to or received from the bankruptcy court.

Ineligible Borrower Claims

For an ineligible borrower claim, the lender is required to submit only items 1 through 9 of the preceding list—plus reasonable documentation supporting the borrower's ineligibility for the loan, such as an affidavit or letter from the school or a statement from the lender clearly stating the facts and allegations.

Closed School Claims, False Certification Claims, and Unpaid Refund Discharges

Documentation requirements for closed school and false certification claims are outlined in subsections 8.2.G. and 8.2.H., respectively. Documentation requirements for unpaid refund discharges are outlined in subsection 8.2.I.